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No. 116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

AMERICAN STEAMSHIP COMPANY, as owner of the Str. JOHN J. BOLAND,

Petitioner,

VS.

THE INTERLAKE STEAMSHIP COMPANY, as owner of the Str. FRANK ARMSTRONG,

Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

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THE INTERLAKE STEAMSHIP COMPANY, as owner of the Str. FRANK ARMSTRONG,

Respondent.

PETITION

Your petitioner, American Steamship Company prays for a Writ of Certiorari to the Court of Appeals for the Sixth Circuit to review its judgment filed February 6, 1952 affirming the decree of the United States District Court for the Northern District of Ohio filed July 11, 1950 and to review the order of the Court of Appeals for the Sixth Circuit filed March 14, 1952 denying your petitioner's petition for a re-hearing. The opinion of the Court of Appeals is reported at 194 F. 2d Page 25. The Court of Appeals rendered no opinion in denying petition for re-hearing. The opinion of the United States District Court is not officially reported, but it is reported at 1950 A. M. C. 1678.

Nature of the Case

The case arises out of an extremely serious collision in fog so dense that visibility was but about 200 feet (R. 99)

in the waters of Lake Erie on November 2, 1948 between the Str. FRANK ARMSTRONG, owned by The Interlake Steamship Company and the Str. JOHN J. BOLAND, owned by your petitioner.

The collision occurred in a stretch of water on the Canadian side of the international boundary in the western end of Lake Erie used by all vessels going to and from the Detroit River when bound to or from points ~~west~~ east of Toledo and also by vessels going to or from Toledo when bound to or from points ~~west~~ east of Toledo.

The District Court found that the collision was the result of the faults of both vessels and that they were equally at fault and should equally share the damage.

Petitioner contends that if the Str. JOHN J. BOLAND was at fault the faults of the Str. FRANK ARMSTRONG were so glaring, gross and flagrant that her faults contributed in greater degree to the collision than did any faults of the Str. JOHN J. BOLAND and that since the collision was in Canadian waters the comparative or "degree of fault" rule of the Canada Shipping Act has application (R. 549).

Notwithstanding a statement in the opinion of the Court of Appeals that their examination of the record left them in a fog nearly as thick as that on the lake on the night of the collision, there are certain circumstances in connection with the collision which make an analysis of the facts extremely simple.

Nevertheless it is felt in behalf of the petitioner, that it would be presumptuous to even ask the Supreme Court to review the facts of this case.

Therefore, the basis on which petitioner requests a review of the judgment of the Court of Appeals is that on the

evidence for the Str. FRANK ARMSTRONG alone without resort to any other evidence in the case she was guilty of glaring, gross and flagrant violation of the rules of navigation and of glaring and gross negligence.

A mere recital of the disclosures of the evidence from the ARMSTRONG alone as to her navigation and conduct preceding the collision will show how flagrant were her faults.

On the other hand, the impression given by the opinion of the Court of Appeals is that the navigation of the Str. FRANK ARMSTRONG was almost innocuous and the judgment of that Court even condones an alteration in course of the steamer while going at full speed against the most authoritative pronouncements and even against a decision of the Court itself in which the opinion was written by Judge Taft, later Chief Justice Taft, holding such an alteration in course a most grievous fault.

It is suggested that if the Court finds your petitioner's views are well founded and the judgment of the Court of Appeals should be reversed in respect of the basis on which this petition is made that the case may be remanded to the Court of Appeals for further consideration in the light of the judgment of this Court.

Jurisdiction

Jurisdiction to review the judgment is under Section 1254 (1) of the Judicial Code.

Southern Pacific Co. v. Hagland Admrx., 277 U. S. 304, 72 L. Ed. 892, 48 Sup. Ct. Rep. 510.

The Facts

At the time of the collision the ARMSTRONG was one of the most modern ships on the Great Lakes having been

built in 1943. She was 623 feet in length overall, had a beam of 60 feet and a depth of 30 feet (R. 83). She was equipped with a "Sperry Radar" (R. 84) and was also equipped with a compass course recorder (R. 64). She was of the conventional type of bulk lake freighter with engines aft and the pilot house forward.

The BOLAND was also of the conventional type of lake bulk freighter. She was about 500 feet in length overall with a beam of 52 feet and a depth of about 31 feet. She had no radar but had a gyro compass besides her magnetic compass (R. 329).

The collision occurred in a stretch of water about 17 miles long between Pelee Passage Light commonly called the Middle Ground (Libellant's Ex. 3-6, Respondent's Ex. Q W) at the eastern end of the stretch and Colchester Reef Light at the western end of the stretch. The Lake Survey Charts in evidence show a true course of 283° from Pelee Passage Light to Colchester Reef Light for a west bound vessel. The reverse of that course for an east bound vessel is 103°. The chart also shows the west bound course for vessels passing Pelee Passage Light to go to Toledo is 278°.

There is nothing compulsory about the indicated courses shown on the chart. To some extent the steering of one of such courses by a vessel is dependent upon her distance off one of the lights when passing it.

The ARMSTRONG was on a voyage from Superior, Wisconsin to Erie, Pennsylvania with a cargo of about 13,436 tons of iron ore (R. 83).

The BOLAND had left Lorain, Ohio about 8:20 P. M. in the evening of the collision for Toledo and had no cargo (R. 330). The collision occurred shortly after midnight.

Evidence From the ARMSTRONG

The collision was at 12:02 A. M., November 2, 1948 (R. 70).

The ARMSTRONG passed the East Channel Gas Buoys which are a short distance below the mouth of the Detroit River and which are 12 miles west of Colchester Reef at 10:12 P. M., November 1st, at full speed (R. 86). About 5 minutes after passing the East Channel Gas Buoys the Master of the ARMSTRONG was called to the pilot house because of fog and at that time she was on a course of 101° (R. 87).

On passing Colchester Reef a bearing by radar with the use of the variable marker and cursor line was taken showing the ARMSTRONG was 1.3 miles off the reef (R. 89).

The charted course of 283° (reverse 103°) from Colchester Reef to Pelee Passage is from a point three-quarters of a mile off Colchester Reef.

Shortly after passing Colchester Reef the ARMSTRONG was informed by radio-telephone from the Str. ELLWOOD down near the Middle Ground or Pelee Passage that the ELLWOOD had just met four west bound vessels and that the ARMSTRONG would be meeting them shortly (R. 91).

The four vessels were seen in the scope of the ARMSTRONG's radar and appeared to be one right after the other in a line running parallel to the course the ARMSTRONG was steering in the opposite direction (R. 94) and on the port bow of the ARMSTRONG (R. 117).

The first of the vessels proved to be the Str. COLONEL J. M. SCHOONMAKER. To pass the SCHOONMAKER the ARMSTRONG altered her course by 5° according to her Master

(R. 95) and by her compass course recorder the alteration was at 11:45½ P. M. and was from 100½° to 104½° (R. 67).

When abreast, the SCHOONMAKER was about one-half mile off the ARMSTRONG to the north by radar (R. 95, 118). On passing the ARMSTRONG the Master of the ARMSTRONG just listened to whistles in the pilot house window and did not thereafter look in the scope of the radar (R. 95, 130).

The three blast fog signals of the next vessel which proved to be the BOLAND were heard and the ARMSTRONG began blowing one blast passing signals (R. 96) and continued the blowing of three blast fog signals (R. 96).

The ARMSTRONG blew 4 or 5 one blast passing signals before it was claimed she checked at 11:55 P. M. (R. 96) and then continued blowing one blast passing signals without getting any reply excepting the three blast fog signals (R. 97) and altogether blew from 8 to 10 one blast passing signals without getting any answer (R. 119).

At 11:55 P. M. by her compass course recorder the ARMSTRONG altered her course by 10° from 104½° to 114½° and at 12:00½ A. M. altered about another 10° to the right and from 114½° to about 125° (R. 67).

By the ARMSTRONG'S compass course recorder the collision occurred at 12:02 A. M. ARMSTRONG'S time (R. 70).

The ARMSTRONG was at full speed until about the moment of collision.

The Master and Mate of the ARMSTRONG testified that the ARMSTRONG'S speed was checked from full speed ahead to half speed at 11:55 P. M. (R. 109, 236).

The log book of the ARMSTRONG with respect to the time she passed Colchester Reef and as to the time of the check

at 11:55 P. M. was not written up until about an hour after the collision. The original entries at the time of passing Colchester Reef and the check at 11:55 P. M. were made on a scratch pad and the slips on which they were made were not preserved (R. 108). The entry in the engine room log book is on one line:

"Check half ahead then full astern then stop."

And on the next line:

"Collision stop 12:03 A" (Libellant's Ex. 18, R. 301, 302).

The engineer at the throttle testified that it was not over a minute and a half or 2 minutes from the time of the half ahead until the collision (R. 307) and at the Coast Guard Hearing 2 days after the collision he testified that the half speed signal and the astern signal came within 30 seconds of each other and that the collision occurred half a minute after the full astern (R. 309, 310).

The Chief Engineer testified that it was about 2 minutes from the check to the collision (R. 324) and the Oiler likewise so testified (R. 315). At the Coast Guard Investigation the Master of the ARMSTRONG testified that the *second alteration* in course of 10° came *right after* the check (R. 125, 126).

The second alteration to the right of 10° was at 12:00½ A. M. (R. 67) or 1½ minutes before the collision.

Up to the time of the half speed order by the Engineer at the throttle, the ARMSTRONG's engine

"Was in the full speed ahead position and the engine was going full speed." (R. 300).

When the lights of the BOLAND were first seen she was a couple of hundred feet away on an angle of about 45° (R.

99) and it was claimed the stem of the BOLAND struck the port bow of the ARMSTRONG about 15 feet from the latter's stem (R. 99).

Following the collision the Second Mate of the ARMSTRONG went down below and came back and reported that the collision bulkhead was leaking a "little bit but nothing serious" (R. 135). Distress signals were heard from the BOLAND (R. 135). The ARMSTRONG continued swinging around to the right (R. 135) and by 12:12 A. M. 10 minutes after the collision she had come around almost 180° to 283½° (R. 70) and by the record in her engine room at 12:08 A. M. and 5 minutes after the time of collision as recorded in the engine room her engines were at full speed ahead (R. 302, 305) and the ARMSTRONG was on her way back to Bar Point (R. 135) (Near the mouth of the Detroit River).

I

Navigation of the ARMSTRONG was in flagrant disregard of the law with respect to speed in fog.

Canadian rules for navigation of the Great Lakes are substantially the same as the rules of the White Law which is the Act of Congress containing the rules of navigation for the Great Lakes. Title 33 U. S. Code (Sections 241-294). For convenience we will quote the American instead of the Canadian rules.

Rule 15, Section 272 of Title 33 U. S. Code is as follows:

> "Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rain storms, or other causes, go at moderate speed. A steam vessel hearing, apparently not more than four points from right ahead,

> the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other."

The ARMSTRONG failed to moderate her speed at all upon encountering fog and flagrantly violated the rules from the time she began to hear the fog signal of the Str. BOLAND continuing as she did at full speed until about the moment of collision.

This Court has expressed its views of such navigation in an opinion by Mr. Justice Henry Billings Brown in the UMBRIA, 166 U. S., 404, 407.

In that case the UMBRIA did reduce her speed upon first hearing the whistle of the IBERIA and continued under reduced speed until a second and perhaps a third whistle were heard. The Master of the UMBRIA thereupon determined that the approaching steamer was on a parallel course, that the UMBRIA was well clear of her and ordered engines full speed ahead again 4 minutes before the collision (P. 406).

The ARMSTRONG altered her course to the right to pass the SCHOONMAKER at 11:45½ P. M. (R. 117, 67). The Master of the ARMSTRONG estimated that the ARMSTRONG was abreast the SCHOONMAKER within 2 or 3 minutes after that alteration (R. 117).

The whistles of the BOLAND were heard right after the ARMSTRONG passed the SCHOONMAKER and first sounded about half a point on the ARMSTRONG's port bow (R. 283, 284).

The ARMSTRONG had not made any reduction in speed for meeting the SCHOONMAKER and then with the BOLAND approaching almost dead ahead on the estimated basis and

after first hearing fog whistles of the BOLAND at about 11:48 she continued at full speed until about the moment of collision.

We quote from the opinion in the UMBRIA:

"That the UMBRIA was *gravely in fault* in the matter of speed is too clear for serious argument. She was within 12 miles of one of the most frequented harbors in the world, in the track of vessels bound into and out of this harbor, and was running at a speed of from 16 to 19 knots an hour through an intermittent or variable fog, which was sometimes so dense that vessels could not see each other more than 1 or 2 lengths off. She had heard at least two whistles from the IBERIA, and without waiting definitely to locate her, had ordered her engines full speed ahead within a minute from the time she hove in sight. Her excuse is that the first whistle of the IBERIA, which does not seem to have been heard by the master, but was heard by some of the other officers, appeared to be upon the starboard bow, apparently a long distance off; that the second whistle also seemed a long distance off and well to the southward; and the master, supposing that they were from a steamer approaching upon a course parallel to his own, concluded that he was clear of her or had shaken her off; that the approaching steamer would probably port her helm to avoid the NORMANDIE, which was coming up on the UMBRIA'S starboard quarter, and therefore ordered his engines full speed ahead to avoid the danger consequent upon such a movement on the part of the IBERIA. This assumption was clearly an insufficient excuse for the order. It is difficult to locate the exact position of a vessel in a fog, and still more difficult to determine her course and distance; and while a whistle continues to be heard so nearly ahead, it is manifestly unsafe to assume that she is upon a course that will take her clear. The assumption might be justified if the signals were often repeated and kept constantly growing fainter or broader off the bow; but in this case the UMBRIA heard but two, or possibly three, whistles from the IBERIA, the last one of which must have seemed

nearer than the first, since the steamers were rapidly approaching each other. The IBERIA could not have appeared to be further to southward than when her first signal was blown, since she had then ported two points, and was really further to the northward. In resuming his speed under such circumstances, the master acts at his peril. As was said by Sir Robert Phillimore, in the case of THE KIRBY HALL, L. R. 8 Prob. Div. 71: 'We wish to state with as much emphasis as possible, that those in charge of a ship in such a dense fog as was described in this case should never conjecture anything when they hear a whistle in such close proximity, as was the case here, whether the sound appears to them to come from a vessel approaching them or not.' Of course there is a point depending upon the number, distinctness, and apparent position of the approaching signals, beyond which precautions are unnecessary and the master has the right to assume that he has shaken off the other vessel, but it is entirely clear that that point had not been reached in this case, and that the immediate cause of the collision was the order to go ahead at full speed before the course and position of the IBERIA had been definitely ascertained. Indeed, so gross was the fault of the UMBRIA in this connection, that we should unhesitatingly apply the rule laid down in ALEXANDRE *v.* MICHAN ("THE CITY OF NEW YORK", 147 U. S. 72, 85 (37:84, 90), and, THE LUDVIG HOLBERG, 157 U. S. 60, 71 (39: 620, 624), that any doubts regarding the management of the other vessel, or the contribution of her faults, if any, to the collision, should be resolved in her favor. It was suggested upon the argument that it was customary for large passenger steamers carrying the mails to run at full speed in a fog, and that this was really the safer course for them, as the greater the speed the sooner they pass the foggy belt. However this may be, the custom is not one to which the courts can lend their sanction as it implies a *flagrant disregard* of the safety of other vessels." (Emphasis ours) (P. 407).

II

The ARMSTRONG'S navigation was in flagrant disregard of Rule 26 of the White Law.

Rule 26 (Section 291 Title 33 U. S. Code) is as follows:

> "Rule 26. If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse."

The ARMSTRONG never slowed to bare steerageway and did not reverse engines until about 30 seconds before the collision according to the testimony of the engineer at the throttle at the Coast Guard Hearing held two days after the collision and not more than about 1 minute before the collision according to testimony at the trial, and never blew a danger signal until just before the collision and just before the engines were put full speed astern and when the BOLAND was only a couple of hundred feet away (R. 98, 99).

The rule itself clearly specifies the duty of a vessel under such circumstances and a mere recital of the testimony from the ARMSTRONG as to her own navigation convicts her of the most flagrant violation of the rule.

In the case of the SONOMA–EMPIRE CITY (Pittsburgh S. S. Co. v. Duluth S. S. Co.) C.C.A. 6, 222 F. 834, 835) the Court of Appeals for the Sixth Circuit itself found the SONOMA

at fault for failure to slow to a stand still and blow an alarm when she blew but *one* unanswered one blast passing signal.

Here the ARMSTRONG claims to have blown 8 to 10 one blast passing signals without getting an answering passing signal.

Besides the case of the SONOMA–EMPIRE CITY, flagrancy of the violation is established in such cases as:

The NEW YORK, 175 U. S. 187, 201.
The NORTH STAR, 62 F. 71 (C.C.A. 6).
GEORGE W. ROBY, 111 F. 601, (C.C.A. 6).
Hawgood Transit Co. v. Mesaba Transit Co., 166 F. 697, 701 (C.C.A. 6).

III

There was gross negligence of the ARMSTRONG in blindly, while at full speed, altering her course to the right.

The ARMSTRONG made an alteration in course to the right on the assumption that the BOLAND was on her port bow. Nothing could be more plain that her assumption was wrong because she had to make an alteration to the right of 20° after passing the SCHOONMAKER to reach and get into collision with the BOLAND.

Generally, an alteration of course in a fog is regarded as a grievous fault.

The most lenient view taken of such an alteration is that in the UMBRIA, 166 U. S. 404. In that case, the IBERIA was running with her engines "easy", the lowest order short of stopping, and a change in course on the part of the IBERIA was excused with Mr. Justice Brown writing:

"Under such circumstances, and in view of the fact that the exact position and course of the UMBRIA could not be determined, we think it would have been more prudent on the part of the IBERIA not to have changed her course until the position and course of the approaching steamer had been definitely ascertained, although we should be reluctant to hold that such change of course was a fault on her part, which should condemn her in a moiety of the damages. There are undoubtedly authorities and some expressions of this court to the effect that a change of the helm, in ignorance of the exact position and course of an approaching vessel, is a fault, although we have never held that it would be a fault in every case presenting these conditions. THE SARAH WATSON v. THE SEA GULL, 90 U. S. 23 Wall. 165, 175, 177 (23: 90, 93); *ALEXANDRE v. MACHAN, (THE CITY OF NEW YORK") 147 U. S. 72, 85 (37: 84, 90); THE JAMES WATT, 2 W. Rob. Adm. 271; THE ALBERTA, 23 Fed. Rep. 807, 811; THE BOUGAINVILLE, L. R. 5 P. C. 316; THE FRANCONIA, 4 Ben. 181, 185; THE SHAKSPEARE, 4 Be. 128; THE LORNE, 2 Stu. Adm. 177; THE WESTERN METROPOLIS, 2 Ben. 399, 402; THE HAMMONIA, 4 Ben. 518, 522; THE NORTHERN INDIANA, 3 Blatchf, 92, 110; THE NORTH STAR, 43 Fed. Rep. 807, 22 U. S. App. 242, 252; THE FOUNTAIN CITY, 22 U. S. App. 301; THE ARTHUR ORR, 69 Fed. Rep. 350; THE RESOLUTION, 6 Asp. Mar. L. Cas. 363."

In a case in the Sixth Circuit in which the opinion was written by Judge Taft, later Chief Judge Taft, and in which the change of course was somewhat comparable with that of the ARMSTRONG,

The NORTH STAR, 62 F. 71 (C.C.A. 6 1894) it was held:

"The recklessness of the SHEFFIELD in porting, instead of stopping and reversing, to ascertain with certainty the position and course of the NORTH STAR, *appears greater as the time and place of the porting is found to be nearer to the collision.* There was an obvious motive on the part of the SHEFFIELD's witnesses, therefore, to make the time between their porting and the collision as great as possible. This is the explana-

tion of the exchange of 7 single blasts a minute apart just preceding the collision, made so prominent a part of the SHEFFIELD's story. * * * The only reasonable explanation is that suggested by the District Judge.—a confusion of signals. The SHEFFIELD mistook a double blast from the STAR for a single blast, or perhaps two of them, and, without stopping to ascertain the STAR's exact position and course, recklessly took it for granted that she was going to port and herself ported and thus ran across the bows of the STAR. Of course, this was *reckless navigation and gross negligence* for which she must be condemned * * *" (PP. 80-81). (Emphasis ours.)

The court considered in that case that it had discretion with respect to the allowance of interest which was substantial because it was on the value of the SHEFFIELD which had been fixed at $177,214 and in the exercise of discretion with respect to such allowance it was held:

"It seems to us that the fault of the SHEFFIELD in porting so near the point of meeting, and crossing the bows of the NORTH STAR, involved gross recklessness, while the faults of the NORTH STAR were more excusable." (P. 86).

In the ALBERTA, 23 F. 807 (ED Mich. 1885) Judge Brown, later Mr. Justice Brown wrote:

"If the ALBERTA did port in ignorance of the actual position and course of the OSBORN, it was a fault for which she ought to be condemned. It is one of the elementary rules of navigation that a vessel ought never to alter her helm in ignorance of the position and course of an approaching vessel. It is true that by such change she may escape a collision, but the chances are equal that she will bring it about. Instead of experimenting, it is her duty to stop, and sometimes to reverse. THE JAMES WATT, 2 W. Rob. 270, 277; THE BOUGAINVILLE, L. R. 2 P. C. 316; THE FRANCONIA, 4 Ben. 181, 185; THE SHAKESPEARE, 4 Ben. 128; THE LORNE, 2 Staurt, Vice Adm. 177; THE SCOTIA, 5 Blatchf. 277" (P. 811).

In the GEORGE W. ROBY, 111 F. 601 (C. C. A. *6* 1901) notwithstanding a passing agreement by exchange of signals, it was held with Judge Lurton, later Mr. Justice Lurton writing:

> "To go ahead on the chance of safety from the change of course authorized by the passing agreement was to take a risk not justified by sound principles of navigation nor authorized by the positive rules of congressional legislation" (P. 610).

In addition to the above two cases and cases cited in the opinion of Mr. Justice Brown in the UMBRIA cases to the same effect are:

The DELAWARE, 213 F. 214, 215 (C. C. A. 2 1914);

Dollar S. S. Line v. Matson Nav. Co., 23 F. (2) 554, (C. C. A. 9 1928);

The WEAR, 23 Lloyd List Law Reports Page 59 ADM DIV. Oct. 29, 1925.

IV.

There was gross negligence in the navigation of the ARMSTRONG in her failure to use her radar as she approached the BOLAND and after passing the SCHOONMAKER.

An attempt was made to excuse the failure to use radar on the ground that some difficulty had been experienced with it.

The ARMSTRONG's radar could be used for 5 ranges between 1 mile and 30 miles (R. 84). It required but the turning of a knob to shift from one range to another (R. 76).

It was good enough to take a bearing at Colchester Reef from 1.3 miles off (R. 89).

The Master of the ARMSTRONG was able to determine with radar that the SCHOONMAKER passed the ARMSTRONG ½ mile to the north.

For a period of upwards of 13½ minutes before the collision after passing the SCHOONMAKER and in which the Master of the ARMSTRONG had her radar available there was no use of it at all.

In the AUSTRALIA STAR, 74 F. Supp. 145 (D. C. S. D. N. Y. 1947) where after the Master of the steamer had a radar report at 9:20 and failed to get another report four minutes later the Court held:

> "It has been suggested that to hold the AUSTRALIA STAR at fault is to penalize her because of her equipment with radar. That is a misconception. The conduct which is regarded as negligent on the part of a person of sound vision is not the same as that which is condemned when practiced by the blind. *The fault of the* AUSTRALIA STAR *is that she chose to remain blind when she had the means to see.*
>
> Prudent navigation involves taking advantage of all the safety devices at hand. Insofar as it is the judicial function to fit scientific discoveries into the framework of laws not tailored to their measure, the function should be carried out with an eye to the general purposes of the law, and to desirable social ends." (Emphasis ours.) (PP. 147, 148, 149).

In the MEDFORD, 65 F. Supp. 622 (D. C. E. D. N. Y. 1946) it was held:

> "The failure of the BARRY to use her radar is the most serious and sinister aspect of these causes. The perfection of that device is thought to have invoked a new concept of the responsibilities attaching to vessels so equipped, touching their handling and operation in or near a fog-bound area."

V.

In failing to "Stand-By" and in running away the ARMSTRONG violated a fundamental rule of common decency as expressed in the "Stand-By" Act enacted by Congress.

That statute is as follows:

"STAND-BY ACT. (Sept. 4, 1890); (27 Stat. L. 425). That in every case of collision between two vessels it shall be the duty of the master or person in charge of each vessel, if and so far as he can do so without serious danger to his own vessel, crew, and passengers, (if any) to stay by the other vessel until he has ascertained that she has no need of further assistance, and to render to the other vessel, her master, crew, and passengers (if any) such assistance as may be practicable, and as may be necessary in order to save them from any danger caused by the collision, and also to give to the master or person in charge of the other vessel the name of his own vessel and her port of registry, or the port or place to which she belongs, and also the name of the ports and places from which and to which she is bound. If he fails so to do, and no reasonable cause for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default.

Sec. 2. That every master or person in charge of a United States vessel who fails, without reasonable cause to render such assistance or give such information as aforesaid shall be deemed guilty of a misdemeanor, and shall be liable to a penalty of one thousand dollars or imprisonment for a term not exceeding two years; and for the above sum the vessel shall be liable and may be seized and proceeded against by process in any district court of the United States by any person; one-half such sum to be payable to the informer and the other half to the United States.

Sec. 3. That this act shall take effect at a time to be fixed by the President by Proclamation is sued for that purpose." (33 U. S. Code 367).

The conduct of the ARMSTRONG in running away was the climax of her reckless navigation.

Reasons for Granting the Writ

I

The judgment of the Court of Appeals in this case in its failure to find the Str. FRANK ARMSTRONG was guilty of flagrant violation of the rules of navigation and gross negligence is contrary to authoritative decisions of this Court and of the Court of Appeals itself.

II

The judgment in the case is so superficial that it falls far short of fulfilling the obligation of a high court in Admiralty. It is of the highest public importance that the high standards of American jurisprudence in Admiralty Law be maintained.

III

It is of high public importance that the courts require strict conformance with laws and regulations designed to prevent collisions.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari may issue directed to the United States Court of Appeals for the Sixth Circuit commanding that Court to certify and to send to this Court a full and complete transcript of the record of all proceedings of said Court in the above entitled cause, to the end that said cause

may be reviewed and determined by this Court as provided by law.

And your petitioner will ever pray.

AMERICAN STEAMSHIP COMPANY,

By JOHN J. BOLAND, *President.*

LAURENCE E. COFFEY,
Counsel to Petitioner.

State of New York, }
County of Erie. } ss.:

JOHN J. BOLAND being duly sworn deposes and says that he is the President of American Steamship Company, the petitioner herein, that he had read the foregoing petition subscribed by him, and that the facts therein are true to the best of his knowledge, information and belief.

JOHN J. BOLAND.

Sworn to before me this
6th day of June, 1952.
Fenton F. Harrison,
Notary Public, State of New York.
Qualified in Erie County.
My Commission Expires March 30, 1953.
Reg. No. 4931.

I HEREBY CERTIFY that I have examined the foregoing petition. In my opinion the petition is well founded and the cause is one in which the prayer of the petitioner should be granted by this Honorable Court.

LAURENCE E. COFFEY,
Counsel to Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

AMERICAN STEAMSHIP COMPANY, as owner of the Str. JOHN J. BOLAND,

Petitioner,

vs.

THE INTERLAKE STEAMSHIP COMPANY, as owner of the Str. FRANK ARMSTRONG,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

This is the first collision case of which we have knowledge reaching litigation on the Great Lakes in which radar is a factor.

It is the first collision case reaching litigation anywhere of which we have any knowledge in which one of the colliding vessels was equipped with a compass course recorder accurately recording her changes in course and the times at which such changes were made.

It is the first collision case of which we have any knowledge in which there was a radar picture of the colliding vessels as they approached each other and reached collision in the scope of the radar of a third disinterested vessel (R. 424, Resp.'s Ex. R).

In the light of the long history of successful solutions of fog collision cases in the past, it is strange that in this

first case reaching an Appellate Court of which we have seen any report in which information afforded by these modern devices was available a high court, with a long and distinguished record in the decision of such cases, should have found itself so baffled.

Actually there are two elements in the case that do make the determination of controlling facts in the case comparatively simple.

The first of these elements is that the ARMSTRONG'S own compass course recorder furnished evidence of her courses and of alterations in her courses and the times of such alterations.

If her speed be known then there is no difficulty in arriving at how far toward Pelee Passage Light she had progressed at 12:02 A. M. and how far her altered course took her to the right and to the south at the time of collision.

Simple arithmetic furnishes her speed based upon the evidence from the disinterested SCHOONMAKER.

The SCHOONMAKER passed Pelee Passage Light at 11:15 P. M. (R. 432) and 17 miles farther west, Colchester Reef at 12:35 A. M. (R. 437). Her rate of speed is thus easily calculated and was at 12.7 miles per hour (R. 433).

The SCHOONMAKER'S time must have been in substantial synchronization with the ARMSTRONG because the collision was observed from the SCHOONMAKER shortly after 12:02 A. M. when the weather reports came over the radio-telephone (R. 441) and the collision by the ARMSTRONG'S compass course recorder was at 12:02 A. M. (R. 70).

The location of the ARMSTRONG when she passed the SCHOONMAKER is determined by the fact that the Master of the ARMSTRONG estimated it was two or three minutes

after altering course for the SCHOONMAKER that the two vessels were abreast (R. 117) and the alteration was at 11:45½ A. M. Consequently, it was about 11:48 when the two vessels were abreast or about 33 minutes after the SCHOONMAKER passed Pelee Passage Light. The SCHOONMAKER'S rate of speed being known, the approximate location of the SCHOONMAKER and that of the ARMSTRONG at about 11:48 A. M. when they passed each other is found.

With the approximate location of the ARMSTRONG at about 11:48 known her average rate of speed from the time she passed the East Channel Gas Buoys 12 miles west of Colchester Reef at 10:12 P. M. (R. 86) is easily calculated.

The location of the vessels at collision is a controlling fact with regard to responsibility for the collision.

There is available for determining the location of the vessels at collision a record of the courses taken by the ARMSTRONG and a ready means of arriving at her speed.

We doubt that in a lake fog collision case more precise evidence was ever available than in this one for determining the place of collision.

In another aspect the judgment in the case disregards a rule of common sense given recognition by two distinguished judges in the Sixth Circuit.

When the Steamer BOLAND passed Pelee Passage Light there was visibility for about two miles (R. 331). A four point bearing was taken on the light (R. 401). Such a bearing has precision because it is based on the mathematical certainty that the two sides of a right triangle are equal (R. 150). The BOLAND altered her course for Toledo when abreast the Pelee Passage Light (R. 332).

In both the cases of the Cambria S. S. Co. v. Pittsburgh S. S. Co., 189 F. 653, affirmed 212 F. 674 and Brown S. S.

Co. v. Fontana S. S. Co., 28 F. 2 939, with Judge Denison writing it was held that when a vessel does have a definite "fix" of her position at a time relevant to a collision it should require evidence of the most conclusive character to disturb that evidence.

In the ALBERTA, 23 F. 807, 810 Justice Henry Billings Brown then a District Judge wrote:

> "That the probability that a vessel, bound from one headland to another, will take the usual and direct course between them is so strong that a deviation from such a course, without adequate cause, ought to be established by the clearest preponderance of testimony."

Both the District Court and the Court of Appeals in this case ignored this common sense guide to decision.

The trial of this case began on February 7, 1950 and the oral testimony was concluded February 15, 1950.

The District Court permitted only 45 minutes oral argument to each side and took no briefs.

The views of the District Court appear to be largely controlled by some evidence from the Str. ELLWOOD which was east bound ahead of the ARMSTRONG. It was foggy when the ELLWOOD passed Colchester Reef (R. 142). She did not have radar and merely estimated she was 1.1 miles off Colchester Reef when she passed it. Even on her estimate she was .35 miles south of the 283° course shown on the chart and was bound to cross from left to right, from north to south, the course of vessels from Pelee Passage Light to Toledo before she reached Pelee Passage.

This was ignored by both the District Court and the Court of Appeals.

From the foregoing it may be observed on what a superficial examination of the case the judgment of the Court of Appeals is based.

The above discussion is not presented with any thought that the Supreme Court should examine the record in the case but in the belief that the matters discussed are clear and apparent without any intensive examination of the record.

We hope it may also be clear from the above discussion that the controlling facts of the case may be determined without weighing the credibility of witnesses against others. Such controlling facts being found the respective versions of the collision must fall in line with them.

In the jurisprudence of England and this country there is a long history of scrupulous care in the judgments rendered in collision cases.

The care given to the decision in fog collision cases is exemplified in this Court in such cases as

The Pennsylvania, 86 U. S. 125, 19 Wall. 125;
The Ludvig Holberg, 157 U. S. 60;
The Umbria, 166 U. S. 404;
The New York, 175 U. S. 187;
Lie v. San Francisco & Portland S. S. Co., 243 U. S. 291.

Among the notable decisions in the Sixth Circuit are:

The North Star, 62 F. 71;
Lake Erie Tr. Co. v. Gilchrist Tr. Co., 142 F. 89;
The George W. Roby, 111 F. 601;
Hawgood Tr. Co. v. Mesaba S. S. Co., 166 F. 697;
Great Lakes S. S. Co. v. Pittsburgh S. S. Co., 222 F. 862;
The Martin Mullen, 260 F. 916.

Out of a long experience we truthfully regard the judgment in this case as a judgment in an important maritime collision case a blemish upon American jurisprudence. We feel obligated to do our part to correct it. We believe the Supreme Court has an important responsibility in the exercise of admiralty jurisdiction.

It is, of course, of no public importance how the case is resolved with respect to money damages but it is a fact that during a time of tremendous demand for raw materials such as iron ore and coal the two vessels involved were out of commission for the remainder of the Great Lakes season of navigation and for over one month as a result of the reckless navigation of the Str. ARMSTRONG.

The enforcement of the laws and regulations designed to prevent collisions is of the highest public importance.

The borders of the states of Michigan and Ohio are, to a great extent, three of the Great Lakes. It is probably owing, in part at any rate, to that fact that a greater percentage of cases from the Great Lakes reach the Court of Appeals for the Sixth Circuit than to any other Appellate Court.

Therefore, the Court of Appeals for the Sixth Circuit is the court with a greater responsibility than any other for the enforcement of the laws and regulations for the Great Lakes.

Without the experience of this case we should not have believed that a court charged with such responsibility would have passed over so lightly the utter disregard of every law and regulation having application and the gross negligence shown in the evidence from the ARMSTRONG herself without resort to any other evidence.

Administrative agencies must look to the courts for guidance. The judgment in this case affords a basis for the Coast Guard to wink at violation of the laws and regulations designed to prevent collisions.

This era of a plethora of accidents is an ill time for a court charged with great responsibility to let down the standards.

It is respectfully submitted that the petition should be granted.

LAURENCE E. COFFEY
Proctor for Petitioner

LAURENCE E. COFFEY
LUCIAN Y. RAY
JAMES P. HEFFERNAN,
Of Counsel.